S.B. CIVIL WRIT PETITION NO.5575/2005

Smt. Raisa vs. Smt. Ammna and others.

Date : 21.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Shambhoo Singh, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner/defendant/tenant is aggrieved against the order of eviction passed by the two courts below dated 19.3.2005 and 1.8.2005. The Rent Tribunal ordered eviction of the tenant on the ground of subletting which was upheld by the first appellate court.

According to learned counsel for the petitioner, the court below committed serious illegality in decreeing the suit of the plaintiff only on the ground that since the defendant/tenant is a pardanasheen lady and, therefore, the plaintiff proved the case of the subletting. Learned counsel for the petitioner also submitted that permission to cross examine the witnesses was not given to the petitioner.

I have considered the submissions of learned counsel for the petitioner and perused the reasons given by the two courts below.

The petitioner is Pardanasheen lady is one of the fact

taken note of by the two courts below and not the sole ground for passing the order of eviction. It appears from the reasons given in the judgment that the trial court considered the various affidavits and thereafter concluded that the petitioner sublet the property to Ganpat and thereafter to Prem s/o Harku Ram. Such a finding of fact recorded by two courts below is based on evidence.

So far as permission to cross examine the witnesses is concerned, for that, the petitioner even did not raise any objection in time and even did not raise this objection in first appeal, therefore, this objection cannot be entertained in view of the fact that the Division Bench of this Court also held that though permission should be granted for cross examination of the witnesses in the eviction proceedings but for that purpose, one is required to seek permission.

When the petitioner did not raise this ground before the first appellate court, he cannot be permitted to raise the ground in the writ petition.

In view of the above, I do not find any merit in the writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya